

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1574 OF 2002

Sanjay S. Joshi

(M/s.Jolline Wine Mart)

..Petitioner.

Vs.

The Collector of Mumbai (City)

& Ors.

..Respondents.

...

Mr.Vishal B. Thadani for the Petitioner.

Mr.G.W.Mattos, AGP for the State,

...

CORAM : DR.D.Y.CHANDRACHUD, J.

12th April, 2005.

P.C. :

1. The Petitioner is the sole proprietor of a business by the name of M/s.Jolline Wine Mart and holds an FL II licence under the Bombay Prohibition Act, 1949. The Petitioner was carrying on business at Shop No.1, H.G. Building, Chawl No.2, T.J.Road, Sewri, Mumbai 400 015 on the strength of a licence

under the Act. The Petitioner had to vacate the earlier premises and made an application to the Collector of Mumbai city for shifting the licence from Sewri to premises at HEG 1/1 C, Vakola Bridge, Nehru Road, Santacruz (E), Mumbai 400 055. Since a shifting of the licence from Mumbai city to Mumbai suburbs was involved, the case was referred to the State Government for approval. It has been stated that on 30th October, 2001 the State Government granted its permission for the shifting of the licence from the Shop at Sewri to the premises at Vakola. The Petitioner was required to obtain a transport permit from the Inspector of State Excise. On 14th December, 2001, the Collector of Mumbai (Suburbs) informed the Petitioner that his request for shifting could not be allowed since the new premises shown by the Petitioner were 'photo-pass premises'. The Petitioner thereupon preferred an appeal. In the appeal an order was passed by the Commissioner of State Excise by which the matter was remanded back to the Collector. Thereupon, according to the Petitioner, the Collector of Mumbai addressed a letter to the Principal Secretary (Revenue) soliciting his opinion. In the meantime, according to the

Petitioner, licences have been renewed to several other establishments under the Bombay Prohibition Act, 1949 though these were situated in censused structures for which photo-passes have been issued. According to the Petitioner, an establishment by the name of Sagar Wines which had made an application for shifting on 20th March, 2002 to 'photo-pass premises', near the premises of the Petitioner was allowed to shift by the Collector. Thereupon the Petitioner made another application on 17th April, 2002 to the Collector, relying upon the orders which were passed in the case of Sagar Wines. The Petitioner approached the Commissioner of State Excise by filing another appeal on 14th May, 2002. It has been averred that the Commissioner sought information from the Collector who in turn had taken the position that the orders of the State Government were awaited. This Petition was instituted to challenge the order of the Collector dated 14th December, 2001 declining the request of the Petitioner for shifting to the new premises.

2. When this Petition was admitted on 25th June, 2002, an ad-interim order was passed in terms of

prayer clause (c) of the Petition, by which the Collector was restrained by an order of injunction from preventing the Petitioner from commencing business in the new premises at Vakola. The Petitioner, the Court is informed, is continuing his business in pursuance of the interim order. When this Petition came up for final hearing on 8th April, 2005, having regard to the fact that the licence has been renewed, the learned AGP sought an adjournment to take instructions from the office of the Collector. Accordingly the matter has been placed on Board today.

3. At the hearing of the Petition, the learned AGP states on instructions received from Mr.S.B.Sharma, Deputy Superintendent of State Excise, (Suburbs) that the Petitioner would be allowed to continue to run the business on the basis of the existing licence until such time as the State Government takes a final decision on whether a licence under the Bombay Prohibition Act, 1949 should be granted and/or renewed in respect of censused structures. In view of this statement, nothing further survives in the Petition. However, there shall be a direction to the effect that in the event that the

Respondents seek to terminate the licence of the Petitioner at any future stage based on the decision of the State Government, prior notice of one week shall be granted to the Petitioner so as to enable the Petitioner to take recourse to such legal steps as he may be advised to adopt.

4. However, it is clarified that the Petitioner shall comply with all the other requirements for the renewal of the licence under the Bombay Prohibition Act, 1949 and this order shall not be construed as an injunction restraining the Respondents from taking any action in the event that there is any breach or contravention of the terms of the licence or of law. The Petition is accordingly disposed of. No order as to costs.